

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

City of Montgomery, Ohio, :
: Case No. 1:13CV609
Plaintiff, :
:
v. : Judge Michael R. Barrett
:
Our Family Home, Inc., et al., :
:
Defendants. :

CONSENT DECREE AND FINAL JUDGMENT ENTRY

This matter having come before the Court on the application of the parties, Plaintiff City of Montgomery (“City” or “Montgomery”) and Defendants Our Family Home, Inc., Our Family Home Operating Co., LLC, and OFH Properties, LLC (collectively “Our Family Home”), each of which advises through counsel that they have reached agreement to resolve all pending claims as follows, **it is therefore decreed:**

1. Montgomery recognizes that the Adult Family Home as proposed by Our Family Home at 10684 Bramblewood Circle, Montgomery, Ohio is a *residential facility* (“Residential Facility”) to provide accommodations and personal care services for five or fewer individuals with Alzheimer’s or dementia as defined by R.C. § 5119.34(A).¹ A Residential Facility is a permitted use as indicated in R.C. § 5119.341(A) within Montgomery’s Single-Family Residential “A” District and each of the City’s Residential Districts as established by Section

¹ On September 29, 2013, R.C. § 5119.22 was renumbered to R.C. §§ 5119.34 and R.C. 5119.341. The substantive language of the statute, however, has not changed.

151.0101 of the Montgomery Zoning Code. As such, a Residential Facility is not subject to any of the requirements or conditions set forth in Chapter 151.20 of the Montgomery Zoning Code. Our Family Home's proposed Adult Family Home at 10684 Bramblewood Circle shall be subject to the conditions as agreed in Paragraph 3 herein, but shall not be qualified as a conditional use subject to any of the additional conditions imposed by the Montgomery Zoning Code for all conditional uses or for a Family Home or Group Home for Handicapped Persons, nor shall the Our Family Home application be subject to the conditional use permit process of the Montgomery Zoning Code.

2. The City will issue Our Family Home a zoning permit for 10684 Bramblewood Circle as a permitted use.

3. The City and Our Family Home stipulate that:

a. Our Family Home will provide the City with a copy of the evacuation plan it will provide to the Department of Mental Health and Addiction Services in order to obtain a license for the Residential Facility at 10684 Bramblewood Circle. As amended and updated during their use of the residence as a Residential Facility, Our Family Home, in a timely manner, shall present a copy of any amended plan to the Montgomery Fire Department.

b. Our Family Home will make a key to 10684 Bramblewood Circle available at the home for use by the City's emergency personnel in the event of an emergency necessitating its use. The key may be made available through a Knox Box or similar security system.

c. Our Family Home will provide the City with the name of a manager with responsibility for the Residential Facility at 10684 Bramblewood Circle to be maintained

administratively. The Montgomery Fire Department shall be updated in a timely manner whenever a new manager or substitute manager is appointed.

d. Our Family Home will provide the City with a 24 hour contact number to be maintained administratively.

4. The information provided pursuant to (c) and (d) above is provided on a confidential basis and shall not be disclosed to anyone except the City's emergency personnel during an emergency, and the City shall exempt such information from public disclosure pursuant to R.C. § 143(A)(1)(v).

5. This Consent Decree and the agreement reached herein that acknowledges Our Family Home's proposed Residential Facility at 10684 Bramblewood Circle as a permitted use in the Single-Family Resident District A shall not exempt Our Family Home from all other requirements of the Zoning Code applicable to a Single-Family residence within the Single-Family Resident A District, the Property Maintenance Code, and/or the Building Code as applied to their use of the home at 10684 Bramblewood Circle unless such requirements conflict with or are otherwise preempted by requirements of the State of Ohio for an Adult Family Home or Residential Facility. Specifically, any expansion of the home must comply with the height, set back, area and other requirements of the Zoning Code applicable to a Single-Family residence within the Single-Family Resident A District unless such requirements conflict with or are otherwise preempted by requirements of the State of Ohio for an Adult Family Home or Residential Facility. Any interior or exterior changes must be constructed in compliance with the Ohio Basic Building Code unless such requirements conflict with or are otherwise preempted by requirements of the State of Ohio for an Adult Family Home or Residential Facility as

permitted in a Single-Family residence district. Finally, any signage shall comply with the requirements of a residential use in a Single-Family Resident A District.

6. The City will conform its ordinances and procedures with R.C. §§ 5119.34, R.C. 5119.341, and state and federal law so as to comply with the requirements restricting handicapped discrimination in housing. Until such time as the Zoning Code is updated or for a period of one (1) year from the date of this Consent Decree, whichever is the lesser amount of time, Our Family Home agrees not to place another Residential Facility within seven hundred and fifty (750) feet of the Bramblewood home. Once the Zoning Code is modified, Our Family Home shall only be required to comply with whatever lawful separation limit, if any, Montgomery shall legally adopt applicable to all Residential Facilities.

7. The City will contribute the sum of \$25,000 to the attorneys' fees incurred by Our Family Home in litigating this action.

8. This Court shall retain jurisdiction of this action for purposes of monitoring compliance with this Decree and entry of such further orders as may be necessary or appropriate. All other claims, counterclaims by and among the parties as set forth within these proceedings, including all claims for declaratory relief removed to this Court from the State proceedings are hereby dismissed with prejudice except to the extent reserved herein.

October 21, 2013

/s/ Michael R. Barrett

Date

Michael R. Barrett
Judge, United States District Court
Southern District of Ohio

The parties jointly request that the Court approve and enter the Consent Decree.

SEEN AND AGREED:

/s/ Daniel J. Buckley

Daniel J. Buckley (0003772)
Trial Attorney for Defendants Our Family Home, Inc.; Our Family Home Operating Co., LLC; and OFH Properties, LLC
Vorys, Sater, Seymour and Pease LLP
301 East Fourth St., Suite 3500
Great American Tower
Cincinnati, OH 45202
Phone: 513-723-4002
Fax: 513-852-7819
djbuckley@vorys.com

Bruce L. Ingram (0018008)
Joseph R. Miller (0068463)
Christopher L. Ingram (0086325)
Of Counsel
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008
Phone: 614- 464-6400
Fax: 614-719-4630
blingram@vorys.com
jrmiller@vorys.com
clingram@vorys.com

/s/ Terrence M. Donnellon

Terrence M. Donnellon, Esq. (0017869)
Donnellon, Donnellon & Miller, LPA
9079 Montgomery Road
Cincinnati, Ohio 45242
Phone: 513-891-7087
Fax: 513-891-7125
tmd@donnellonlaw.com

/s/ Gary E. Becker

Gary E. Becker, Esq. (0012716)
Dinsmore & Shohl, LLP
255 East Fifth Street, Suite 1900
Cincinnati, Ohio 45202
Phone: 513-977-8179
Fax: 513-977-8141
Gary.becker@dinsmore.com

Counsel for City of Montgomery, Ohio